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MONTANA LEGISLATIVE HISTORY

Chapter 223 19 93

Bill H 64 S _____ Original bill & history ✓ C

H. Committee on Nat. Resources		S. Committee on Nat. Resources	
Hearing Date(s) 1/8	✓ C	Hearing Date(s) 3/12	✓ C
	___ C	3/23	✓ C
	___ C		___ C
	___ C		___ C
Date Out	___ C		

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

Chapter Page

APPLICABLE TO CLASS FOUR PROPERTY; ESTABLISHING AN ADVISORY COMMITTEE TO REVIEW ALL RELEVANT COSTS, INCLUDING WATER COSTS, IN DETERMINING THE PRODUCTIVE CAPACITY OF IRRIGATED LANDS; ELIMINATING CLASS ELEVEN FARMSTEAD PROPERTY BY COMBINING IT WITH CLASS FOUR PROPERTY; AMENDING SECTIONS 7-13-2527, 15-6-133, 15-6-134, 15-7-201, 15-10-402, AND 15-10-412, MCA; REPEALING SECTION 15-6-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE *840*

268 *(House Bill No. 342; Strizich)* AN ACT ALLOWING AN AIRPORT OPERATOR TO ENTER INTO A CONTRACT OR LEASE FOR A TERM NOT EXCEEDING 40 YEARS; ALLOWING AN AIRPORT OPERATOR LATITUDE IN DETERMINING REASONABLE CHARGES; EXEMPTING AIRPORT AUTHORITIES FROM CHARGES; AND AMENDING SECTIONS 67-10-302, 67-11-211, AND 67-11-306, MCA *852*

269 *(House Bill No. 364; Mercer)* AN ACT ALLOWING COUNTY COMMISSIONERS TO ASSESS PROPERTY WITHIN A RURAL IMPROVEMENT DISTRICT AND WITHIN A ROAD IMPROVEMENT DISTRICT IN EQUAL AMOUNTS BASED ON THE TOTAL COST OF THE IMPROVEMENT; ALLOWING A CITY COUNCIL OR COMMISSION TO ASSESS PROPERTY WITHIN A SPECIAL IMPROVEMENT DISTRICT IN EQUAL AMOUNTS BASED ON THE TOTAL COST OF THE IMPROVEMENT; AND AMENDING SECTIONS 7-12-2151, 7-12-4162, AND 7-14-2907, MCA *854*

270 *(House Bill No. 502; Barnett)* AN ACT REQUIRING THE RETURN OF A BAIL BOND TO THE SURETY WITHIN 30 DAYS AFTER A CONVICTION; PROVIDING THAT BAIL FORFEITURE BE DISCHARGED IF THE DEFENDANT APPEARS AND SATISFACTORILY EXCUSES AN ABSENCE WITHIN 90 DAYS AFTER THE FORFEITURE; AND AMENDING SECTION 46-9-503, MCA *857*

271 *(Senate Bill No. 139;, Towe)* AN ACT ALLOWING A LOCAL GOVERNMENT TO INVEST IN GOVERNMENT OBLIGATIONS GUARANTEED BUT NOT ISSUED BY THE UNITED STATES; AND AMENDING SECTIONS 7-6-202 AND 7-6-206, MCA *858*

272 *(House Bill No. 408; Fagg)* AN ACT GENERALLY REVISING THE MONTANA SUBDIVISION AND PLATTING ACT; CHANGING THE DEFINITION OF SUBDIVISION; REMOVING THE OCCASIONAL SALE EXEMPTION; REMOVING THE 20-ACRE LIMITATION; MODIFYING THE FAMILY SALE EXEMPTION; CHANGING THE CRITERIA FOR LOCAL GOVERNMENT SUBDIVISION REVIEW; AMENDING SECTIONS 76-3-102, 76-3-103, 76-3-104, 76-3-207, AND 76-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES *859*

273 *(House Bill No. 64; Grady)* AN ACT DELAYING THE EFFECTIVE DATE OF THE LAW ESTABLISHING A SOLID WASTE MANAGEMENT FEE ON WASTE GENERATED OUT OF STATE; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES TO ESTABLISH A FEE ON THE DISPOSAL OR INCINERATION OF SOLID WASTE GENERATED OUTSIDE MONTANA; LIMITING THE LENGTH OF TIME THE FEE IS APPLICABLE TO SOLID WASTE INCINERATORS AND CERTAIN SOLID WASTE DISPOSAL FACILITIES; AMENDING SECTIONS 75-10-118, 75-10-204, AND 75-10-206, MCA, AND SECTION 8, CHAPTER 398, LAWS OF 1991; AND PROVIDING EFFECTIVE DATES *863*

1/08	FISCAL NOTE PRINTED		
1/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/16	2ND READING PASSED	78	17
1/18	3RD READING PASSED	81	18
	TRANSMITTED TO SENATE		
1/20	FIRST READING		
1/20	REFERRED TO JUDICIARY		
1/28	HEARING		
1/29	COMMITTEE REPORT—BILL CONCURRED		
1/30	2ND READING CONCURRED	42	0
2/01	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE		
2/05	SIGNED BY SPEAKER		
2/05	SIGNED BY PRESIDENT		
2/08	TRANSMITTED TO GOVERNOR		
2/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 26		
	EFFECTIVE DATE: 10/01/93		

HB 64 INTRODUCED BY GRADY

DELAY EFFECTIVE DATE OF LAW ESTABLISHING FEE ON DISPOSAL OF OUT-OF-STATE WASTE

BY REQUEST OF ENVIRONMENTAL QUALITY COUNCIL

12/23	INTRODUCED		
12/30	REFERRED TO NATURAL RESOURCES		
12/31	FISCAL NOTE REQUESTED		
1/04	FIRST READING		
1/08	HEARING		
1/08	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/29	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/01	2ND READING PASSED	64	34
2/03	3RD READING PASSED	69	27
	TRANSMITTED TO SENATE		
2/04	FIRST READING		
2/04	REFERRED TO NATURAL RESOURCES		
3/12	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	49	0
3/26	3RD READING CONCURRED	45	1
	RETURNED TO HOUSE		
3/31	SIGNED BY SPEAKER		
4/01	SIGNED BY PRESIDENT		
4/02	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 273		
	EFFECTIVE DATE: 04/07/93—SECTIONS 3 & 5		
	EFFECTIVE DATE: 10/01/93—SECTIONS 1, 2, & 4		

HB 65 INTRODUCED BY COCCHIARELLA

CREATE A STATUTORY LEGISLATIVE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

BY REQUEST OF JOINT INTERIM SUBCOMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

12/29	INTRODUCED
12/30	REFERRED TO STATE ADMINISTRATION
1/04	FIRST READING

HOUSE BILL NO. 68

INTRODUCED BY PAGG

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING FROM WITHIN 10 DAYS AFTER THE OMNIBUS HEARING TO WITHIN 30 DAYS AFTER THE ARRAIGNMENT THE TIME WITHIN WHICH A DEFENDANT IN A CRIMINAL CASE MUST DISCLOSE CERTAIN MATTERS TO THE PROSECUTOR; AND AMENDING SECTION 46-15-323, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-15-323, MCA, is amended to read:

"**46-15-323. Disclosure by defendant.** (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged, shall upon written request of the prosecutor and approval of the court:

(a) appear in a lineup;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of ~~his~~ the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions;

(g) provide handwriting samples; or

(h) submit to a reasonable physical or medical inspection; however, the inspection does not include psychiatric or psychological examination.

(2) Within ~~10~~ 30 days after the ~~omnibus--hearing--in district--court~~ arraignment or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity.

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist or psychologist or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect, the defendant did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements

made by them concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless he the defendant intends to use the privileged report or statement, or the witness who made it, at trial.

(5) Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses and disclose their reports or statements as required by this section. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list and the witness's report or statement has been disclosed as required by this section, except for good cause shown.

(6) Within ~~10~~ 30 days after the ~~omnibus-hearing-in district-court~~ arraignment or at a later time as the court may for good cause permit, the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case-in-chief, together with their statements;

(b) the names and addresses of experts whom the

defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case; and

(c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

(8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person to make the material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN DICK KNOX**, on January 8, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 64 and HB 30
Executive Action: None

HEARING ON HB 64

Opening Statement by Sponsor:

REP. ED GRADY, HD 47, Helena, and a **member of the Environmental Quality Council (EQC)** stated HB 64 is an EQC sponsored bill. The bill would delay the effective date of the law establishing a solid waste management fee on waste generated out-of-state. **EXHIBIT 1** The bill would require the Department of Health and

Environmental Sciences (DHES) to adopt rules establishing fees on the incineration of this waste. The Statement of Intent in the bill directs DHES to report to the 1995 legislature on the adopted fees. The intent of the bill is to keep Montana from subsidizing the disposal of solid waste generated from out of state through general fund expenditure.

Proponents' Testimony:

Christine Mangiantini, on behalf of the **Montana League of Women Voters**, said the League supports the involvement of state and local government with its citizens. The League further encourages safe storage and transportation of waste. **Ms. Mangiantini** asked if the bill precluded local entities from establishing and executing a similar fee structure for costs related to the siting of out-of-state waste.

VICE CHAIRMAN ROLPH TUNBY, HD 24, Plevna, told the committee that Fallon County has one regional landfill with only two towns presently using the site for disposal. There are counties in North Dakota that would like to utilize the disposal site which in turn would also benefit Fallon County residents. **REP. TUNBY'S** proposed amendments, **EXHIBIT 2**, require DHES to determine a disposal site fee by July 1, 1993 rather than October 1, 1993 and would not revert back to the $5 fee.

Jon Dilliard, Department of Health and Environmental Sciences (DHES), noted that DHES did not have any problems with the proposed time-frame required in the Tunby amendments.

VICE CHAIRMAN TUNBY told the committee his amendments are dependent on a bill he will be presenting which would exempt these five counties from the moratorium on solid waste importation.

Dennis Olson, Northern Plains Resource Council (NPRC), said NPRC supports the intent of HB 64.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. HAL HARPER asked if the fee addressed in the amendment would be based only on identifiable direct costs? **VICE CHAIRMAN TUNBY** responded that the term "indirect costs" could subject the fee to a court test and also seemed to be "a little too vague."

REP. HARPER noted the terms "direct" and "indirect" costs are in the Statement of Intent and are not addressed in **REP. TUNBY'S** amendments. **VICE CHAIRMAN TUNBY** stated his amendments would correct the confusion between "direct" and "indirect costs."

REP. BOB GILBERT suggested the committee correct **REP. TUNBY'S** amendments during executive action since the amendments are

merely proposed.

REP. BOB RANEY asked **REP. GRADY** if he agreed with the effective dates of October 1993 and July 1995, as noted in the amendment. **REP. ED GRADY** explained he was unaware of this amendment and noted that EQC needed this two-year effective date to develop cost figures for the fees.

REP. RANEY asked if there was a proposal from the federal government which would allow states to set fees above actual costs so that if the state chose to make any money on the importation of waste, it could.

Paul Sihler, EQC, stated the proposal involves a federal commerce clause which only allows congress to regulate interstate commerce.

REP. HARPER said he was having difficulty understanding the timeframes involved with the bill. He asked how DHES had the authority to adopt this fee and if there was a termination date for the rule. **Mr.Sihler** stated the $5 fee enacted through SB 346 last session would become effective July 1, 1993. Section 1 extends that effective date to 1995, **Mr. Sihler** said. The second section of the bill requires DHES to establish a fee that is legally defensible.

REP. HARPER asked **Mr. Sihler** if there was presently sufficient statutory authority allowing DHES to propose and adopt these rules? **Mr. Sihler** stated there is, in statue, a $5 per ton fee but DHES does not currently have the authority to promulgate rules to establish a fee for "direct" and "indirect costs."

Closing by Sponsor:

REP. GRADY thanked the committee and stated he hoped this bill would receive a do pass recommendation.

Presentation by Jean Riley, Petroleum Tank Release Compensation Board

Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, presented a Summary of Title 75, Chapter 11, Part 3 MCA, Petroleum Storage Tank Cleanup. **EXHIBIT 3**

REP. EMILY SWANSON asked for clarification on the financial background of Title 75. Initially, the fee was one cent per gallon (July 1, 1989) and increased to three-fourths cent per gallon in 1991. **Ms. Riley** told the committee the fees were discontinued October 1, 1991 when the fund balance exceeded $8 million. **Ms. Riley** indicated when the balance drops below $4 million the fee will resume.

REP. RUSSELL FAGG asked **Ms. Riley** if there were claims that had

not been submitted. **Ms. Riley** replied 302 sites have been reimbursed. There are 1,000 new sites; 700 of which are currently active and 80 to 90% of those sites would be eligible for funding.

REP. SWANSON asked whose tanks were involved. **Ms. Riley** stated the tanks belong to service stations, farms, bulk stations, and businesses. The only tanks for which the board has not reimbursed are railroad tanks.

VICE CHAIRMAN TUNBY said he understood that the fund would run out of money at some point in time. **Ms. Riley** said the fee would kick back in when the balance in the fund drops below a certain level. It is anticipated that approximately $3.3 million would potentially be generated.

REP. SCHWINDEN asked how the average Montana farmer would find out about the petroleum tank release program? **Ms. Riley** stated that once the tank release was referred to DHES, the Petroleum Tank Release Compensation Board would in turn notify the tank release program.

HEARING ON HB 30

Opening Statement by Sponsor:

REP. BOB RANEY, HD 82, Livingston, substituting for **REP. JERRY DRISCOLL,** told the committee that during the 1991 legislative session, a House Joint Resolution was requested by **REP. DON LARSON** who was concerned with lake shores and the use of Montana's lakes. The 52nd Legislature passed HJR 17 instructing the Environmental Quality Council to conduct an interim study on lake shore development. **EXHIBIT 4**

Paul Sihler, EQC Staff, stated that HJR 17 changes the definition of a lake shore from 20 to 50 feet. The current Lake-shore Statute directs counties with natural lakes to develop permitting regulations for activities which will affect the lake from an area 20 feet above the high water mark and into the lake.

REP. JERRY DRISCOLL, HD 92, Billings, said HB 30 is the product of a lake-shore study assigned by the 52nd Legislature. Violation of the lake-shore permitting requirements is currently a criminal offense under the Lake-shore Statute. **REP. DRISCOLL** presented his amendments to the committee. **EXHIBIT 5**

Proponents' Testimony:

Janet Ellis, Montana Audubon Legislative Fund, stated the bill was a step toward protecting water quality in some Montana counties. The extension to 50 feet is consistent with the Stream-side Management Zone Act for timber practices passed in the last legislative session. The penalty section, which adds

Bill Summary
HB 64

EXHIBIT 1
DATE 1-8-93
HB 64

Section 1:

WHAT: Delays for 2 years the effective date of the $5.00 per ton fee on out-of-state solid waste disposed of in Montana. This fee was enacted by the 1991 legislature and would now become effective on July 1, 1993.

WHY: To allow DHES to time to adopt a lesser and more legally defensible fee by rule while maintaining the existing fee in statute.

Several recent U.S. Supreme Court rulings, and an Oregon Appeals court ruling on a similar law, have increased the likelihood that the $5.00 fee, if challenged, would be ruled excessive and unconstitutional. Consequently, because the Legislature does not have adequate information to set a legally defensible fee, it is necessary for DHES (see section 2) to adopt a fee by rule.

Section 2:

WHAT: Directs DHES to adopt a fee on disposal of out-of-state waste based upon the direct and indirect costs to the state of regulating out-of-state waste.

The rules must be adopted by the expiration date of the moratorium on importation of solid waste (Oct. 1, 1993) and terminate on July 1, 1995 when the $5.00 per ton fee becomes effective. The statement of intent directs DHES to report to the 1995 Legislature on the implementation of the fee. The legislature would then have the opportunity to repeal the $5.00 fee and codify the fee adopted by the department.

WHAT: The intent is to keep Montanans from subsidizing the disposal of solid waste generated out-of-state via general fund expenditures. The fee revenue would be spent in place of general fund money.

EXHIBIT 2
DATE 1-8-93
HB 64

Hunter

PROPOSED AMENDMENTS TO HOUSE BILL NO. 64

1. Title, lines 5 through 7.
Following : "ACT"
Strike: "DELAYING THE EFFECTIVE DATE OF THE LAW ESTABLISHING A SOLID WASTE MANAGEMENT FEE ON WASTE GENERATED OUT OF STATE;"

2. Title, line 10.
Following: "SECTIONS"
Insert: "75-10-118,"

3. Title, lines 11 and 12.
Following: "MCA"
Strike: ", AND SECTION 8, CHAPTER 398, LAWS OF 1991"
Insert: "."

4. Page 2, lines 11 through 14.
Following: Page 2, line 10
Strike: section 1 in its entirety
Insert: **Section 1.** Section 75-1-118 is amended to read:
75-10-118. (Effective July 1, 1993) **Solid waste management fee -- out-of-state waste.** (1) A person who owns an incinerator that burns solid waste or a solid waste disposal fiacility that is licensed pursuant to 75-10-221 and to rules adopted under 75-10-221 shall pay to the department a quarterly fee ~~of $5 for each ton of solid waste generated outside Montana and incinerated or disposed of at a facility.~~ as determined by the department in accordance with 75-10-204(8).
(2) All fees must be deposited in the solid waste management account provided for in 75-10-117.

5. Page 3, line 8.
Following: "on the"
Insert: "identifiable"
Following: "direct"
Strike: "and indirect"

7. Page 3, line 24.
Following: "rules"
Strike: ":"
Insert: "must be adopted by July 1, 1993."

8. Page 3, line 25 through page 4, line 1.
Following: Page 3, line 24
Strike: subsections (a) and (b) in their entirety.

EXHIBIT J Riley #3
DATE 1-8-93

Summary of Title 75, Chapter 11, Part 3 MCA
Petroleum Storage Tank Cleanup

In 1989 the Montana Legislature passed HB 603 which created the Montana Petroleum Tank Release Compensation Board and the Montana Petroleum Tank Release Cleanup Fund. In 1991 the Montana Legislature passed HB 973 which included coverage on certain tanks which were excluded in HB 603. The following is a summary of the responsibilities of the Board and what the Fund will reimburse to owners/operators.

The Board manages the Fund and determines the eligibility of owners/operators and whether the costs claimed are reimbursable. The Board may reimburse owners/operators for releases covered under the HB603 Program for 50% of the first $35,000 spent then 100% of the next $965,000. The total reimbursement of eligible costs could be $982,500 if the owner/operator spends $1 million. The Board may reimburse owners/operators for releases covered under the HB973 Program for 50% of the first $10,000 spent then 100% of the next $490,000. The total reimbursement of eligible costs could be $495,000 if the owner/operator spends $500,000.

The Board is made up of seven members appointed by the Governor for terms of three years. The members of the Board consist of the following:

- Department of Health and Environmental Sciences (DHES) Director or His Representative
- State Fire Marshal or His Representative
- Representative from the Petroleum Services Industry
- Representative from the Petroleum Marketers and Chain Retailers
- Representative from the General Public
- Representative from the Service Station Dealers
- Representative from the Insurance Industry

The Statute allows for the coverage of underground storage tanks, aboveground storage tanks with a capacity less than 30,000 gallons, and all piping connected to said tanks whether aboveground or underground. There are some types of tanks which are not covered as outlined by the statute. These tanks include:

- Tanks located at a refinery or a terminal of a refiner.
- Tanks located at an oil or gas production facility.
- Tanks that are or were previously under the ownership or control of a railroad.
- Tanks belonging to the federal government.
- Tanks owned or operated by a person who has been convicted of a substantial violation to state or federal tank rules.
- Mobile storage tanks used to transport petroleum products from one location to another.

Subject to the availability of Fund, an owner/operator who is eligible and complies with any rules adopted to implement this law must be reimbursed by the Board from the Fund for the following costs caused by a release from a petroleum storage tank:

- Corrective action costs.
- Compensation paid to third parties for bodily injury or property damage.

-OVER-

Not all expenses to the owner/operator are covered, the following are expenses which are not covered by the Fund :

- Corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the Board to be ineligible for reimbursement.
- Costs for bodily injury and property damage, other than corrective action costs incurred by the owner/operator.
- Penalties or payments for damages incurred under actions by the department, Board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations.
- Attorney fees and legal costs of the owner/operator or a third party.
- Costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the replacement of a tank or piping.
- Expenses incurred before April 13, 1989 (HB 603) or May 15, 1991 (HB 973).
- Expenses exceeding the maximum reimbursements ($982,500 or $495,000).

As was previously stated, the owner/operator is eligible for reimbursement if they comply with the rules governing storage of petroleum in tanks. The following are the eligibility requirements as stated in the Statute:

- The release was discovered on or after April 13, 1989, and tanks were in place at that time.
- The DHES - Underground Storage Tank (UST) Program was notified of the release within 24 hours.
- The DHES - UST Program was notified of the existence of the tank, if required, using the UST notification form.
- The release was accidental.
- The operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following the detection of the release.

If an owner/operator discovers or is provided with evidence that a release may have or did occur from his/her petroleum storage tank and he/she is seeking reimbursement of eligible costs the following must be done:

- Immediately notify (within 24 hours) DHES - UST Program of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect public health and safety and the environment.
- Conduct a thorough investigation of the release, report the findings to DHES - UST Program, and as determined necessary by the UST Program, prepare and submit for approval by the UST program a corrective action plan that conforms with state and federal corrective action requirements.
- Implement the approved plan, the UST Program may oversee the implementation of the plan, require reports and monitoring for the owner/operator, undertake inspections, and otherwise exercise its authority concerning corrective action.
- Document in the manner required by the Board all expenses incurred in preparing and implementing the corrective action plan.
- Submit claims and substantiating documents to the Board in the form and manner required by the Board.
- Document and submit claims and substantiating documents to the Board for any payments to a third party for bodily injury or property damage caused by a release.

EXHIBIT 3
DATE 1-8-93
(PTRCB)

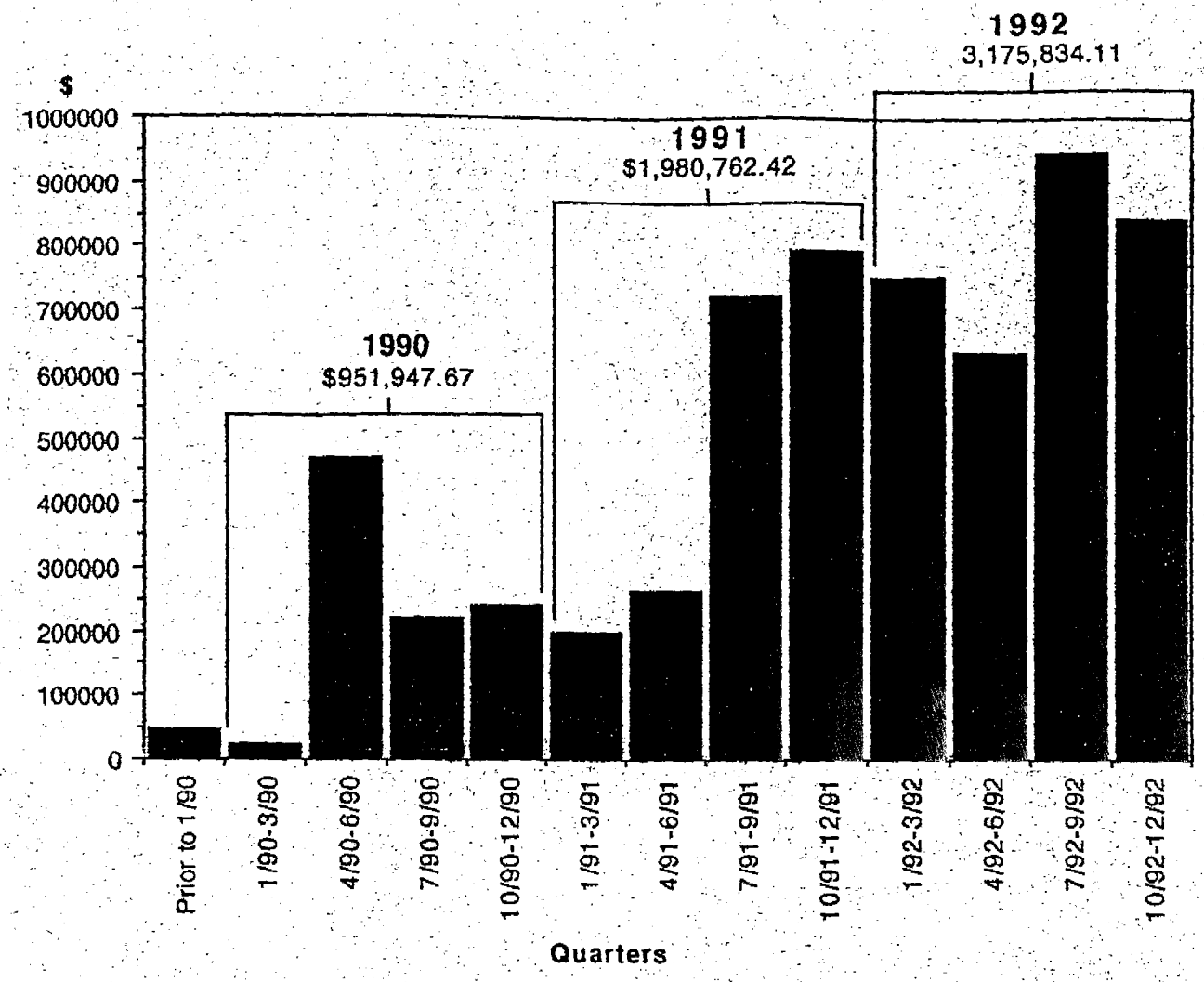
PETROLEUM TANK RELEASE COMPENSATION BOARD

CLAIM SUMMARY

DECEMBER 31, 1992

Claims Received:	
Major Tank Program	955
Minor Tank Program	80
Total Claims:	
Paid	748
Ineligible	2
Denied	11
Withdrawn	2
Pending	272
Total Dollars Paid	$4,550,962.96
Total Paid from Major Program	$4,446,339.61
Total Paid from Minor Program	$104,623.35
Largest Claim Paid	$246,860
Smallest Claim Paid	$22
Most Dollars Paid to Site	$515,789
Least Dollars Paid to Site	$22
Average Paid to Site	$14,800
Sites Paid	302

Dollars Per Quarter Paid and/or Pending



Percentage of Reimbursed Claims for Different Types of Contamination

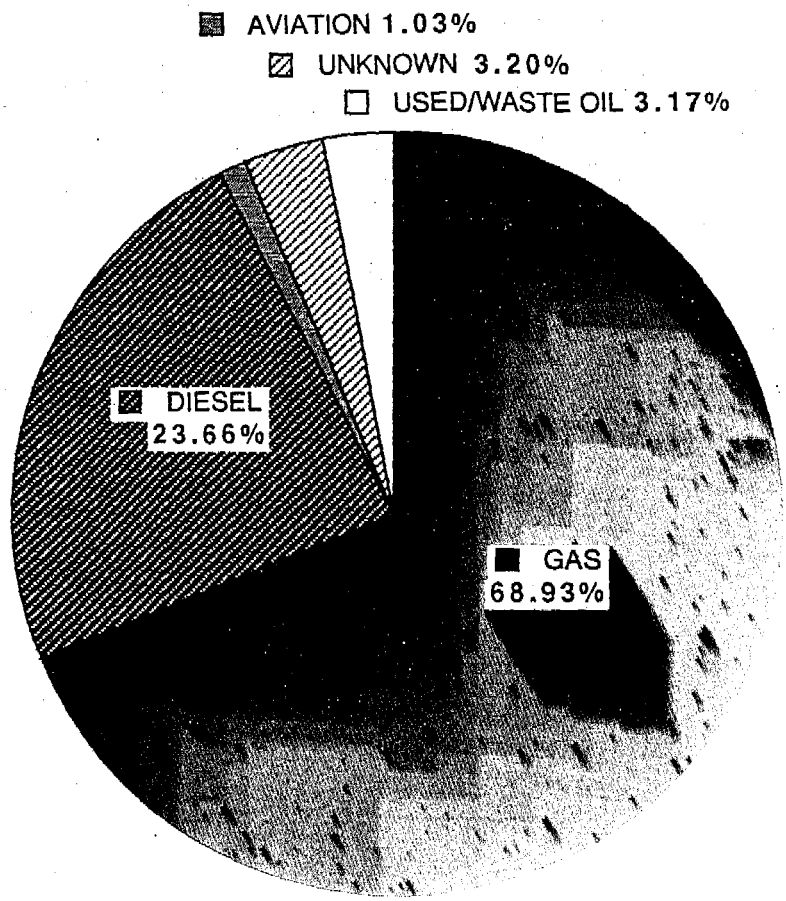


EXHIBIT 3
DATE 1-8-93
(PTRCB)

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 12, 1993, at 3:15 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: Sen. Steve Doherty (D)

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 64, HB 171, HB 532
Executive Action:	HB 171, HB 84, HB 102, HB 30, HB 288, HB 417

HEARING ON HB 64

Opening Statement by Sponsor:

Representative Ed Grady, HD 47, stated HB 64 was introduced because the 1991 Legislature enacted SB 346, establishing a $5 per ton fee on disposal of imported solid waste. He said the fee becomes effective July 1, 1993. Rep. Grady stated several recent United States court rulings and a Board of Appeals ruling on a similar law have increased the likelihood that a $5 fee, if challenged, would be ruled excessive and unconstitutional. He stated EQC's intent in drafting HB 64 was to address the

constitutional problem by delaying the effective date for 2 years and directing the Department of Health and Environmental Sciences (DHES) to develop a more constitutional fee level. Representative Grady added the purpose of the fee is to keep the general fund from subsidizing the disposal of garbage that originates in other states. He stated the House Natural Resources Committee amended HB 64 so that DHES's fee applies to landfills that receive 25,000 tons or less of solid waste annually. He said if the bill passed, the $5 fee would become effective in 1995 and would apply only to landfills that receive more than 25,000 tons annually. Representative Grady concluded HB 64 would allow smaller community landfills to contract with communities in North and South Dakota to dispose of their solid waste.

Proponents' Testimony:

Representative Rolph Tunby, HD 24, said the landfill in his district is near North Dakota. Federal and state regulations are requiring closure of smaller landfills and forcing the opening of regional landfills. He said being able to accept solid waste from North and South Dakota would be to the advantage of Fallon County's landfill. Representative Tunby stated HB 64 allows fees to be structured in a way which will allow and facilitate importation from other states.

Mike Mather, Fallon County planner, stated the county needs to know what the fees on out of state waste will be and asked the Committee to concur in HB 64.

Terry Cosgrove, Fallon County planner, said the $5 fee would have been subject to a legitimate legal challenge. He said with HB 64, the small landfills will know the fee level they will be dealing with.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Grosfield stated the only way to get to Cooke City in the winter is through Wyoming and Park County pays the out of state rate for garbage from Cooke City. He added the only way into Mammoth Hot Springs in the winter is through Montana. He asked John Dilliard, DHES Solid Waste Management program to comment. Mr. Dilliard stated currently Montana is not charging any out of state solid waste fees. He stated if there is a differential fee it may be from the solid waste district that is accepting the waste from Cooke City or Mammoth. Mr. Dilliard said the National Park Service pays the fees for disposal of waste from Mammoth.

He said waste must be generated from an out of state source to be subject to the higher out of state fee, so Cooke City would not have to pay the higher fee even though the waste must travel through Wyoming to reach the Livingston area. Senator Grosfiled stated Park County Commissioners have told him they are paying out of state fees, but Mr. Dilliard said the standard $.31 is the only fee Montana is currently charging.

Senator Weeding asked about the current fee system on out of state waste. Mr. Dilliard stated all solid waste management systems pay an annual licensing fee, part of which is based on the size of the facility. He said the licensing fee also includes a $.31 per ton fee which the waste management systems assess their users. Mr. Dilliard stated under HB 64, a landfill that receives out of state waste would increase the charges to the generator of the waste.

Mr. Dilliard said DHES has been looking at what it would have to do differently if HB 64 passes, and landfills begin accepting out of state waste. He stated that 20% of the program is funded by the general fund. In order to have out of state waste generators pay their share and fund the program as the general fund does, a differential fee of $.10 to $.11 would have to be added onto the $.31 per ton charge. Mr. Dilliard added as of April 1, 1993, Montana law prohibits the disposition in landfills of infectious medical waste. He stated the program may have the added responsibility of ensuring that infectious medical waste is not included in the garbage being hauled into Montana.

Senator Tveit asked Mr. Dilliard to explain the quarterly fee of $5 per ton on solid waste generated outside Montana. Mr. Dilliard stated a facility receiving out of state waste would have to pay $5 per ton on a quarterly basis. Mr. Dilliard stated between August 1, 1993 and the date importation started, all facilities receiving imported waste would pay a fee established by DHES. Beginning July 1995, all facilities accepting out of state waste with a capacity of over 25,000 tons would have to pay the $5 per ton fee established in HB 64, while the facilities with a capacity under 25,000 tons would continue to pay the fee established by DHES.

Senator Keating asked for an estimate on the fee established by DHES. Mr. Dilliard stated that is impossible to determine, since DHES has not completed its study to determine how much additional work would be required. Senator Keating asked about the reason for the differential fee. Mr. Dilliard stated the basis for the fee is to ensure that Montana taxpayers will not have to fund the handling of out of state waste.

Senator Weeding asked what is significant about 25,000 tons. Mr. Dilliard explained the different landfill classifications.

Senator Grosfield asked if waste generated in West Yellowstone, which ends up in Bozeman, would be subject to a $5 per ton fee

since the Bozeman area landfill has a capacity larger than 25,000 tons. Mr. Dilliard responded that waste generated by West Yellowstone or by Cooke City would not be subject to any additional fees if it is taken to an in-state facility. Mr. Dilliard stated there are no large landfills accepting out of state waste.

Closing by Sponsor:

Representative Grady closed.

HEARING ON HB 532

Opening Statement by Sponsor:

Representative Rolph Tunby, HD 24, stated there is currently a moratorium on the importation of solid waste, and HB 532 would provide an exception. He said towns in North Dakota are subject to the same EPA pressures as towns in Montana and they want to know how they can dispose of their waste. He said Alzada is exporting waste into South Dakota and it would make sense for some North and South Dakota facilities to export waste into Montana.

Proponents' Testimony:

Mike Mather, Fallon County planner, said Fallon County's landfill is only 7 miles from the North Dakota border and allowing importation of waste would be a logical weight shift. He added new state and federal regulations have resulted in additional expense, but if Montana can accept out of state waste, the costs to Fallon County's landfill would be significantly reduced. Mr. Mather said it makes sense for small rural communities to work together for effective waste management across state lines.

Senator Betty Bruski-Maus, SD 12, said her district borders North and South Dakota and Wyoming. She stated allowing Fallon County's landfill to accept out of state waste would be "good neighbor policy" and would render the facility more fiscally sound.

Terry Cosgrove, Fallon County, said HB 532 is limited in that it would allow importation of waste only to landfills with a capacity of 25,000 tons or less. He added the bill does not include incinerators and excepts entities that were receiving waste before the moratorium was passed 2 years ago.

Chris Gallus, Montana Technology Companies (MTC), said MTC received an exemption to the moratorium 2 years ago. He stated MTC operates the National Environmental Waste and Technology Testing Evaluation Center (NEWTTEC). Mr. Gallus stated NEWTTEC

DATE 3/12/93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB64, HB171, HB532

Name	Representing	Bill No.	Check One Support	Oppose
Edna Vinson	MDT	HB 64		
Mike Mahon	Fallon County	HB64/352		
Jim Mockler	MT Coal Council	HB171	✓	
TERRY COSGROVE	Fallon County	532 HB64		
Tom Ebzery	Nerco Inc	HB171		
Chris Gallus	MTC	HB532		
Sen Betty Bruski-Maus	Sen Dist 12	HB532		~~HB532~~
Ted Lange	NPRC	HB532		~~HB532~~ w/amen
Dennis Olson	NPRC	HB171	√ w/amend	
John North	State Lands	HB171	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 23, 1993, at 5:15 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	None.
Executive Action:	HB 488, HB 503, HB 30, HB 365, HB 395, HB 64, HB 102

EXECUTIVE ACTION ON HB 488

Motion/Vote:

Senator Swift moved HB 488 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Swift will carry HB 488 on the Senate floor.

Discussion:

Senator Swysgood stated he had not talked to Ms. Franz about this amendment but added the same exemption was present in the other two bills pertaining to basin closures. He said he offered the amendment for the "sake of consistency". Senator Swysgood asked Ms. Franz to comment on the proposed amendment.

Paul Sihler asked Senator Swysgood to specifically identify the kinds of water uses he wanted to exempt from HB 395. Senator Swysgood replied he wanted to incorporate the language on page 2, lines 18-19, of HB 365 into HB 395.

Ms. Franz replied she preferred that the amendment be not adopted because MPC currently objects to all those uses and deems them "consumptive". She said adoption of the amendment would not have much of a "practical effect". Ms. Franz suggested the Committee insert a coordinating instruction so that if both HB 365 and HB 395 were passed, Senator Swysgood's exemptions would apply.

Senator Swysgood stated Ms. Franz's amendment would be "selfish" and added the exemptions should be consistent throughout the basin closure bills. He noted HB 395 would close the Missouri River Basin temporarily while HB 365 and his bill would permanently close basins in their areas.

Vote:

Senator Swysgood's motion to amend HB 395 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Kennedy moved HB 395 BE CONCURRED IN AS AMENDED. MOTION CARRIED UNANIMOUSLY. Senator Grosfield will carry HB 395 on the Senate floor.

EXECUTIVE ACTION ON HB 64

Motion:

Senator Keating moved HB 64 BE CONCURRED IN.

Discussion:

Senator Bianchi asked Paul Sihler to explain the intent of HB 64. Mr. Sihler replied the 52nd Legislature established a $5 per ton fee on all out-of-state waste. He said that fee becomes effective on 1 July 1993. He noted HB 64 would extend that effective date through 1 July 1995 and would require the

Department of Health and Environmental Sciences (DHES) to establish a discretionary fee between 31 cents and $5 per ton to cover costs to DHES for regulating out-of state-waste. Mr. Sihler noted the discretionary fee would become effective 1 August 1993. He said as of 1 July 1995, the $5 per ton fee would apply to all incinerators and landfills in the state receiving more than 25,000 tons of solid waste per year. Mr. Sihler added that the discretionary fee would apply to landfills receiving less than 25,000 tons of solid waste per year. He said the discretionary fee would allow small communities to contract with other areas to decrease their disposal costs.

Vote:

THE BE CONCURRED IN MOTION CARRIED UNANIMOUSLY. Senator Doherty will carry HB 64 on the Senate floor.

Discussion:

Senator Keating asked if the Committee could open executive action on HB 532 which related to HB 64. Senator Bianchi replied it was his understanding that additional amendments would be offered to HB 532 and asked Senator Keating to withdraw his request.

EXECUTIVE ACTION ON HB 102

Motion:

Senator Weeding moved HB 102 be amended.

Discussion:

Senator Bianchi asked someone from the Department of Natural Resources and Conservation (DNRC) to comment on HB 102.

Senator Weeding withdrew his motion to amend HB 102.

Mr. Steve Schmitz, DNRC Water Conservation Bureau Chief, stated conservation districts in the lower Missouri River area have requested that the reservation deadline be extended to 31 December 1995. He said these conservation districts asked for this extension because they were unsure if they would receive funding from HB 6. He said the amendment to HB 102 would give these conservation districts enough time to determine if they would receive funding from HB 6. Mr. Schmitz noted that HB 608, a bill pertaining to conservation districts, passed second reading with an amendment which would cut out "lower districts" from funding.

SENATE STANDING COMMITTEE REPORT

March 24, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 64 (first reading copy -- blue), respectfully report that House Bill No. 64 be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

mi - ---- Daherty